

project because there is an insufficient number of potential applicants who are very low-income families;

(iv) Commitment of an owner to attaining occupancy by families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the owner is pursuing this goal throughout its assisted projects in the community; and

(v) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103).

(2) *For public housing only.* (i) Need for admission of a broader range of tenants to obtain full occupancy;

(ii) Local commitment to attaining occupancy by families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(iii) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(iv) Need to avoid displacing low-income families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners and PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(d) *Reporting.* PHAs and owners shall comply with HUD-prescribed reporting

requirements that will permit HUD to maintain the reasonably current data necessary to monitor compliance with the income eligibility restrictions described in paragraph (a) of this section.

(e) *Inapplicability to certain scattered site housing.* The income eligibility restrictions described in paragraph (a) of this section do not apply to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)).

(f) *Inapplicability to the Section 8 Rental Voucher and Rental Certificate Programs.* The provisions of this section do not apply to the Section 8 Rental Voucher and Section 8 Rental Certificate Programs.

(Approved by the Office of Management and Budget under Control number 2502-0204.)

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.607 was removed, effective Apr. 28, 2000.

#### FAMILY INCOME

#### § 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a

## § 5.609

## 24 CFR Subtitle A (4-1-00 Edition)

business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) *For public housing only:* (i) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the 1937 Act

(42 U.S.C. 1437t), or any comparable Federal, State, or local law during the exclusion period.

(ii) For purposes of this paragraph, the following definitions apply:

(A) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(1) Is authorized by a Federal, State or local law;

(2) Is funded by the Federal, State or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this section, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the family member is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the FEDERAL REGISTER

## §5.611

and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.609 was amended by removing and reserving paragraph (c)(13), by revising paragraphs (c)(8)(iv) and (d), and by removing paragraph (e), effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

### §5.609 Annual income.

\* \* \* \* \*

(c) \* \* \*

(8) \* \* \*

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

\* \* \* \* \*

(d) *For public housing only.* In addition to the exclusions from annual income covered in paragraph (c) of this section, a PHA may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a PHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

## 24 CFR Subtitle A (4-1-00 Edition)

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the PHA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in §5.611.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

\* \* \* \* \*

### §5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions: